

# Rehabilitating Kenya's Judicial System



Justices Mary Ang'awa, Martha Koome, and Emily Ominde.  
IDRC Photos: Nadine Robitaille

2006-10

*By Nadine Robitaille*

“Corruption underdevelops a country. [...] It cripples the whole machinery of government and society,” says Justice Mary Ang’awa of Kenya’s High Court. “The money stolen during the 1990s was enough to educate all Kenyan primary school-aged children for 11 full years. Can you imagine?”

Ang’awa is a member of the Kenya Women Judges Association, which has been working with the Kenya Magistrates and Judges Association (KMJA), and the Judges Welfare Association to address two of Kenya’s biggest problems – corruption within the judiciary, and gender violence.

Ang’awa and fellow magistrates Justice Martha Koome of Kenya’s High Court, Principal Magistrate Emily Ominde, and Senior Principal Magistrate Rosemelle Anyango Mutoka, visited the International Development Research Centre headquarters in Ottawa, Canada, in September to speak to staff and guests about gender-based violence, corruption, and the changes underway within the Kenyan justice system.

## Fighting corruption

Corruption in Kenya has been well documented. In the 1990s, nearly a quarter of Kenya’s annual government spending (68 billion shillings – equivalent to almost US \$1 billion) was lost to corruption. At high levels, corruption involved ministers and civil servants paying as much state cash as possible for shoddy goods or services never rendered.

The judiciary was considered one of the worst offenders within the Kenyan government. There were a host of problems – reportedly some judges were ruling in favour of the highest bidder, misinformed litigants were missing their court appearances, and lack of court reporting led to conflicting decisions and lack of precedence.

“I remember feeling hopeless,” says Koome. “Corruption was undermining the judiciary very seriously. Law was no longer predictable.”



“The judiciary had reached a level where corruption was crippling it and it no longer had the moral standing to deliver justice,” adds Ang’awa. Public confidence in the independence and impartiality of the judiciary had virtually collapsed.

In 2002 Mwai Kibaki was elected Kenya’s president, largely on his anti-corruption platform. He soon ratified the UN Convention Against Corruption, set up a department for governance and ethics, and appointed a Permanent Secretary for Governance and Ethics to oversee the fight against corruption.

In what has become known as “the purge,” the government set up a committee to look at integrity within the judiciary. The committee found that 87 of the country’s 250 magistrates and 23 of its 61 judges were allegedly corrupt.

**Rosemelle Anyango Mutoka**

The report was given to the media, which promptly published the names of the accused without giving them a chance to respond to the allegations. Judges implicated in the report were given the option to either resign and leave quietly or be investigated by tribunals. Ultimately, 18 judges opted to retire while the remaining five decided to face the tribunal and challenge the process, calling it unconstitutional.

In the three years since the process began, only one trial has been completed, and it resulted in an acquittal.

Ang’awa, Ominde, Mutoka, and Koome agree that although the purge’s process was flawed, it was necessary. They are also in agreement that it was only the first step toward a more transparent, more trusted judiciary. Another important factor was education of both magistrates and the public they serve.

## Demystifying the justice system

“Magistrates and judges were disconnected from the public,” says Mutoka, who chairs the KMJA. “People didn’t understand what the judiciary did, and we didn’t think we had to tell them.”

To that end, the KMJA prepared a proposal called *Demystifying the Administration of Justice in Kenya*, and began offering open-door days where magistrates interacted with members of the public. It also began to better prepare and inform witnesses and litigants prior to trials.

“The goal is to rid people of the ignorance and fear of the judicial process,” says Ominde.

The proposal also called for a peer review mechanism, which has yet to be funded or implemented.

Though the changes have not been quick, or painless, says Ominde, they are noticeable.

“Five years ago, in what I like to call ‘the bad old days,’ court was like a marketplace,” she recalls. “There were all these people hanging around the corridors collecting money to give to magistrates or judges.”

“Now it’s clean and airy and nice. Posters outlining people’s right to bail and bond cover the walls. People come to court in total faith and trust that all will be done according to the rules. It’s such a joy.”

The corruption crisis was a wake-up call for magistrates, and the proposal is trying to bring about attitudinal change within the judiciary, she adds.

## **Gender violence – a “national disaster”**

Along with corruption, poverty, and HIV/AIDS, gender-based violence is considered one of Kenya’s most serious issues – it has been described a “national disaster” by one Kenyan media outlet. Nearly 50% of Kenyan women report experiencing violence during their lifetime; one in four had experienced violence in the last year. A quarter of 12 to 24-year-olds lose their virginity by force.

Although it’s a complex issue with no easy fix, the judiciary is trying to do its part to prevent gender-based violence from occurring and to punish offenders sufficiently. In July 2006 the Sexual Offences Act was adopted. It covers the definition of sexual offences, prevention, and protection from unlawful sexual acts. The Act also makes provisions for the deliberate transmission of HIV, for all victims and witnesses of violence, and imposes minimum sentences for people found guilty of sexual offences.

“Now, if you violate or rape a woman, it is like milking an elephant – you are doing something so dangerous,” says Koome. “It’s a funny image, but it illustrates an important message: it’s a very serious thing to violate a woman.”

Police stations now have staff trained to deal with gender violence and, since 2000, legal training clinics on gender issues in the law have been offered. Witnesses to violent crimes are being better prepared and made more comfortable in court.

“We are trying to make it easier to bring sexual offences to court and prove them, and get convictions so that we can encourage more and more girls and women who have been violated to come forward,” says Ominde.

As the Act is still in its infancy, the judges are concentrating their efforts on educating the public, including through talks at schools and churches. “We need a lot of awareness about gender violence and the Sexual Offences Act,” says Koome. “Because if the public does not know about it, then it will never make use of the law.”

## **The way ahead**

While progress has been made, there is still a long way to go.

It’s a struggle to achieve a semblance of gender equity, admits Koome. “Rampant discrimination still exists, even under the law.”

In the area of corruption, there have been a few setbacks. In 2005, the Permanent Secretary for Governance and Ethics resigned his post after uncovering a massive corruption scandal, and the position remains vacant. The government’s credibility has slipped both within Kenya, and among the international community.

Despite these obstacles, the magistrates are hopeful that they are on the right track. “Things are opening up, there is a lot of transparency,” says Ominde. “Of course it’s not perfect, but you work at things, you learn from yesterday’s mistakes today to perfect your tomorrow.”

*Nadine Robitaille is Managing Editor of the IDRC Bulletin*